

## REMARKS

### I. STATUS OF THE CLAIMS

Claims 1-9 are amended. Claims 1-9 are pending and under consideration. Applicants assert that no new matter has been added.

### II. CLAIM OBJECTIONS

Claims 1 and 4 were objected to for informalities.

Claim 1 was objected to because the claim recites an apparatus in the preamble whereas the body shows the steps of a method of the claim. (See Office Action item 3a). Claim 1 has been amended to include the term "device" for each of the corresponding limitations.

Claim 4 was objected to for being difficult to understand. (See item 3b). Claim 4 has been amended to more clearly delimit the particular limitations of the claim.

### III. REJECTION UNDER 35 U.S.C. 101

Claims 1-9 were rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. The Office Action states that claims 1, 2 and 7-9 are directed toward a software program and they are non-statutory for not being tangibly embodied in a manner so as to be executable. (See Office Action item 5). This rejection is respectfully traversed.

#### Claims 1, 8 and 9

Applicants assert that claims 1, 8 and 9 are statutory under 35 U.S.C. 101. Although the preamble in claims 1, 8 and 9 recite the language "for applying revision information to software," applicants assert that the claims do not fall under the category of computer software *per se*. For example, claim 1 recites an "*apparatus* for applying revision information ~~to~~ software." Applicants assert that because an apparatus or method applies revision information ~~to~~ software, the apparatus or method itself is not necessarily "software." Accordingly, the requirement that claims 1, 8 and 9 be embodied in a manner so as to be executable is inappropriate.

Claims 1, 8 and 9 are statutory under 35 U.S.C. 101 as follows:

Claim 1, as amended, is an *apparatus* comprising a "calculation device," a "storage device," and an "application device." Accordingly, claim 1 is a *machine* under 35 U.S.C. 101. (See Fig. 2A).

Claim 8 is a *method* for “calculating,” “reading,” “checking,” and “applying.” Accordingly, claim 8 is a *process* under 35 U.S.C. 101.

Claim 9 is an *apparatus* comprising “calculation *means*,” “storage *means*,” and “application *means*.” Accordingly, claim 9 is statutory under 35 U.S.C. 112, sixth paragraph. Moreover, an apparatus claim with process steps is not classified as a “hybrid” claim; instead, it is simply an apparatus claim including functional limitations. [See, e.g., R.A.C.C. Indus. v. Stun-Tech, Inc., 178 F.3d 1309 (Fed. Cir. 1998) (unpublished); *cited in* USPTO’s “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”).

Accordingly, claims 1, 8 and 9 are statutory under 35 U.S.C. 101.

#### Claims 2 and 7

Claim 2, as amended, recites “A computer readable *medium* storing a *program* ... the program causing a *computer to execute a process*” (emphasis added). Therefore, claim 2 includes a program recorded on a computer readable medium so as to be structurally and functionally interrelated to the medium to permit the function of the descriptive material to be realized. In other words, the program is tangibly embodied in a manner so as to be executable.

Claim 7, as amended, recites “A *carrier signal* that carries a *program*... the program causing a *computer to execute a process*” (emphasis added). Therefore, claim 7 includes a program carried on a carrier signal so as to be structurally and functionally interrelated to the medium to permit the function of the descriptive material to be realized. In other words, the program is tangibly embodied in a manner so as to be executable.

Accordingly, claim 2 and 7 are statutory under 35 U.S.C. 101. Claims 3-6 depend from claim 2 and are statutory under the same rationale as claim 2.

Therefore, applicants respectfully request that the rejection under 35 U.S.C. 101 be withdrawn for claims 1-9.

#### **IV. REJECTION UNDER 35 U.S.C. 102(e)**

Claims 1-4 and 6-9 were rejected under 35 U.S.C. 102(e) as being anticipated by Singh et al. (U.S. 7,155, 462 B1). This rejection is respectfully traversed.

Singh describes the “release of multi-tiered web-hosted application software to take place without disrupting existing versions of the application... [w]hen a new version of a hosted application needs to be installed on a network server, it is installed and the previous version of the hosted application remains on the network... [o]nce the new version of the software has

been tested in isolation, the system administrator installs the new version of the software on the system, so the new version is available to service actual application clients.” (see col 2, lines 25-38). In other words, the system is Singh describes a system where a web-hosted application is assigned to a plurality of clients. There may be more than one instance of the web-hosted application, for example a previous version of the application is still utilized by some users when upgrading; however, the upgrade is still issued to a single server. (see also, Fig. 2A).

In contrast, claim 1 as amended, for example, recites an “apparatus for applying revision information to software in a system that dynamically assigns software to a *plurality of servers*...” (emphasis added, claim 1, lines 1-2;). Although Singh's objective is to make the process of upgrading application software to a user transparent, the client is still always assigned to a *single server*. In contrast, as recited in the embodiment of claim 1, a “*plurality of servers*” are upgraded (see Specification page 28 to page 38, line 11, for an example of upgrading multiple servers). Accordingly, Singh fails to describe, teach, or suggest an “apparatus for applying revision information to software in a system that dynamically assigns software to a *plurality of servers*” as recited by claim 1.

In addition, claim 1 as amended, for example, recites “calculating an index into which a *newness of a software that a customer is using and a security level of the software have been integrated*” (emphasis added). The Office Action cites Singh (Fig. 2a and col. 2, lines 25-58) as describing this feature (see Office Action pg. 3 item 7(a)(i)(1)). This contention is respectfully traversed.

The relevant cite of Singh fails to describe “a *newness of a software that a customer is using and a security level of the software have been integrated*.” The relevant cite of Singh describes merely an “indication of the version of the hosted application with which each client is associated, and an *indication of the status of the client*.” (col 2, lines 63-64, emphasis added). The “indication of the status” merely refers to whether the client is in a “migrating” or “active” state. (see col. 3, lines 1-3 and col. 3, lines 18-21 respectively). Accordingly, the use of a “status” identifier fails to describe “a security level of the software” as recited by claim 1. Moreover, claim 1 recites that a “newness of a software that a customer is using and a security level of the software have been integrated.” Singh fails to describe such integration. Accordingly, Singh fails to describe, teach, or suggest “calculating an index into which a newness of a software that a customer is using and a security level of the software have been integrated” as recited by claim 1. Therefore, claim 1 patentably distinguishes over the cited art for at least the reasons stated above.

Claim 2

Claim 2 recites a “computer readable medium storing a program for a computer to apply revision information... to a plurality of servers... comprising: calculating an index into which a newness of a software that a customer is using and a security level of the software have been integrated,” and therefore, patentably distinguishes over the cited art for at least the reasons stated above.

Claims 3, 4 and 6

Claims 3, 4 and 6 depend from claim 2 and inherit the patentable recitations of their base claim, and therefore, patentably distinguish over the cited art for at least the reasons stated above. In addition, claims 3, 4 and 6 recite additional features not described in the cited art, and therefore, are independently patentable, for example:

Claim 3 recites “assigning the unused server instead of the target server to the customer in order to update the software” (emphasis added).

Claim 4 recites “update the software that has not been assigned to any customer in an unused server” (emphasis added).

Singh fails to describe at least the above-described additional features of claims 3 and 4 because Singh describes a system in which only a plurality of clients access web-hosted application software on a *single server*. (see col. 2, lines 25-28 and Fig. 2). Because the system in Singh utilizes only a single server, it does not describe nor make a distinction between target and unused servers.

Claim 6 recites “index for a version of the software that the customer is using out of a plurality of versions of software to which the revision information is applied” (emphasis added).

Claims 7-9

Claim 7-9 recite “applying revision information to software in a system that dynamically assigns software to a plurality of servers... [and] calculating an index into which a newness of a software that a customer is using and a security level of the software have been integrated,” and therefore, patentably distinguish over the cited art for at least the reasons stated above.

Accordingly, claims 1-9 patentably distinguish over the prior art. Therefore, applicants respectfully request the 35 U.S.C. 102(e) rejection be withdrawn.

**V. REJECTION UNDER 35 U.S.C. 103(a)**

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. (U.S. 7,155,462 B2) and further in view of Matsumoto et al. (U.S. 6,647,125 B2). This rejection is respectfully traversed.

Dependent claim 5 inherits the patentable recitation of its base claim 2. Matsumoto fails to cure the deficiencies of Singh as stated in Section IV, and therefore, claim 5 is patentable over the cited art for at least the reasons stated in Section IV. Therefore, applicants respectfully request the 35 U.S.C. 103(a) rejection be withdrawn.

## VI. CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

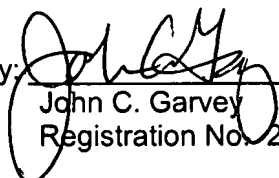
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

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By:   
John C. Garvey  
Registration No. 28,607

1201 New York Avenue, NW, 7th Floor  
Washington, D.C. 20005  
Telephone: (202) 434-1500  
Facsimile: (202) 434-1501